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IN THE

Supreme Court of the United States

No. 293

LOUIE COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

PETITION FOR CERTIORARI AND BRIEF AND ARGUMENT FOR PETITIONER AND REASONS UPON WHICH PETITIONER RELIES REQUESTING THE GRANTING OF A WRIT OF CERTIORARI.

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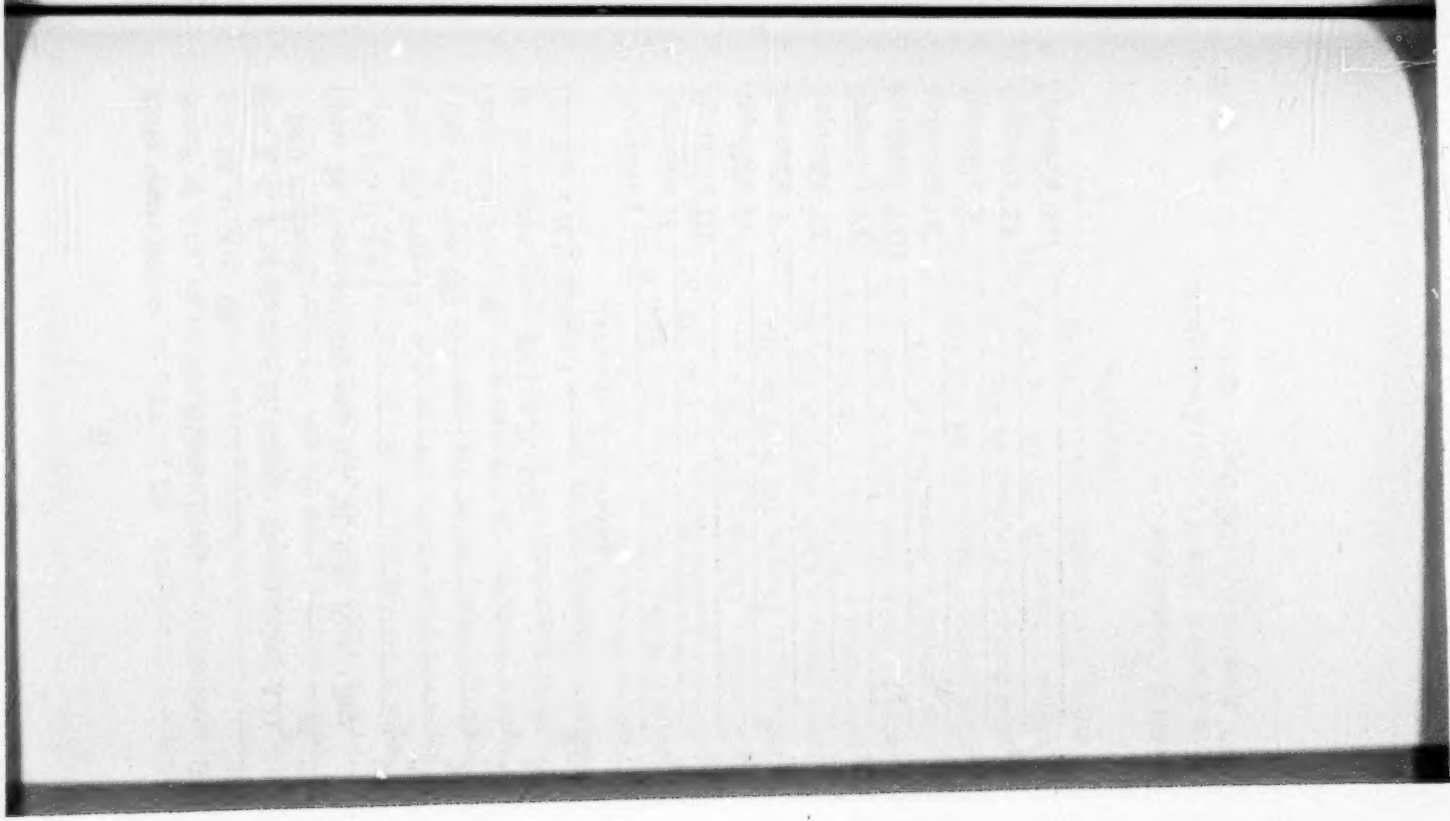

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

LOUIE COSPER,

Appellant,

vs.

STATE OF ILLINOIS,

Appellee.

NOTICE OF APPEAL FROM STATE COURT, CRIMINAL CASE.

Notice is herey given tLat Louie Cosper, the Appellant, above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Illinois, affirming the judgment of conviction, entered herein on January 23, A.D. 1953, in the Municipal Court of Chicago, State of Illinois.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

The Appellant was convicted of the crime of contributing to the delinquency of minor children in violation of Sec. 104, Par. 2, Chap. 38, of the Ill. Rev. Stat. (Bar Edition) A.D. 1953, and was sentenced to a term of ninety (90) days confinement at hard labor, in the House of Correction, in the City of Chicago, County of Cook and State of Illinois, and that the applicant is presently enlarged on bail in the sum of $500.00.

History of the Case.

Your petitioner, on the 6th day of March, A.D. 1953, was sentenced on a judgment, entered on the verdict of a jury returned in the Municipal Court of Chicago, on the 23rd day of January, A.D. 1953, directing the petitioner to suffer imprisonment for a period of ninety (90) days to be served in the House of Correction, in the City of Chicago, County of Cook and State of Illinois. (R. 12 #33304)

Motions for a new trial and arrest of judgment were timely presented, showing as grounds, that the petitioner's Federal and State Constitutional rights under "Due Process of Law" as guaranteed to every citizen in a criminal, or quasi-criminal action under the laws of Illinois have been violated and denied to your petitioner by the Trial Court. The Constitutional errors urged on a rehearing before the Trial Court, were summarily overruled, denied, and preserved of record. (R. 12, #33304)

The petitioner subsequently enlarged on bail, removed the cause by writ of error to the Appellate Court, First District, of Illinois, expressly reserving and presenting Federal and State Constitutional rights denied him by the trial court, and preserved for review to the reviewing courts, for a determination as guaranteed by the XIVth Amendment to the Constitution of the United States, and as guaranteed by the laws of Illinois and the Constitution of the State of Illinois, A.D. 1870.

The violations as charged to the petitioner, under the Statute of the State of Illinois is a misdemeanor.

MISDEMEANOR.

Chap. 38, Sec. 586 Ill. Rev. Stat., (Bar Edition) A.D. 1953, Vol. I, p. 1434:

> "**Misdemeanor.** 6. Every other offense is a misdemeanor. Where the Performance of any Act is prohibited by statute, and no penalty for violation of such statute is imposed, the doing of such act is a Misdemeanor, and may be punished by fine not exceeding $100 or imprisonment in the county jail not exceeding six months, or both in the discretion of the Court."

By judicial decree, the Supreme Court of Illinois has ruled, where cases are taken to the Appellate Courts wherein errors are assigned, of which that court has jurisdiction, the party so suing out the writ of error is deemed to have waived all constitutional questions involved. (Appendix I). (See *People* v. *Rosenthal,* 370 Ill. 244; 18 N.E. 2d 450.) [1]

In the alternative, by the Statute, Chap. 110, Par. 259.47 (Bar Edition) A.D. 1953, and Rule 47 of the Supreme and Appellate Courts of Illinois, Ill. Rev. Stat., A.D. 1953, Vol. 2, p. 529, provide:

> "If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or visa versa, it may be transferred to the proper court on motion, and upon an order for transference being made, all documents already filed in the wrong court, shall be transmitted by the Clerk to the proper court, and the case shall proceed from that point in all respects as though an appeal had originally been taken to the proper court."

The petitioner by stipulation with the State, removed his first appeal by writ of error to the Supreme Court of Illinois, in the November Term, A.D. 1949. The errors

assigned involved a substantial denial of Federal and State Constiutional rights. The court's ruling excluded and ignored the stipulation of the State and the defense. The Supreme Court on March 22, A.D. 1950, holding that no constitutional questions were presented for determination, ordered the cause tranferred to the Appellate Court, First District, Illinois. (Appendix III).

The petitioner timely filing his petition for rehearing. The rehearing was denied on May 15, 1950. *People* v. *Cosper*, 405 Ill. 543, 92 N.E. 2d. 173.

Your petitioner on reason, being hamstrung by the ruling of the Supreme Court in the *Cosper* case (*supra*), rejecting Federal and State claims, adjusted himself to remove the instant cause as the first step to the Appellate Court, First District, of Illinois, and there expressly reserved as errors for determination, a substantial denial of Federal and State Constitutional rights. (R. 79-82 #33304).

Your petitioner removed the cause to the Appellate Court, seeking a determination of his Constitutional questions, as a second step, timely, by notice, moved the court to transfer the cause to the Supreme Court under Rule 47; the State did not object, yet the Appellate Court without reason or comment, rejected and denied the motion to transfer the cause.

The opinion of the Appellate Court rejecting the Federal and State Constitutions claim, re-examined a few basic assumptions and thereupon adjusted itself by affirming the court below. (Appendix II). Your petitioner moving the court for a rehearing, being denied, thereupon removed the cause on Writ of Error to the Supreme Court. The Court there sustaining *in toto* the Appellate Court, rejecting the claim of your petitioner's Federal and State

Constitutional rights, being denied, held, in substance, that by proceeding in the Appellate Court, your petitioner waived all Constitutional questions and rights there presented for review. (Appendix I).

The question here presented is, where an appeal is removed to the Supreme or Appellate Courts of Illinois, can these State courts by rule of procedure, in the face of the XIV Amendment, reject and exclude all Federal and State Constitutional claims and deny to an appellant a right to such a determination under "due process of law"?

WHEREFORE, your petitioner respectfully prays, that upon application of his petition for a writ of *certiorari*, supported by his brief and argument, that the writ of *certiorari* may be issued out of and under the seal of this Honorable Court for its review and determination of the errors complained of, grounded on the trial records:

(a) Supreme Court of Illinois #31350, November Term, A.D. 1949, and (b) Supreme Court of Illinois #33304, November Term, A.D. 1954, titled and docketed, *People* v. *Cosper*.

Respectfully submitted,

LOUIE COSPER,
Appellant and Petitioner.

By: HERBERT W. WETZEL,
ARTHUR FRANKEL,
DEMETRI M. SPIRO,
Attorneys for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1955.

No.

LOUIE COSPER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Your petitioner, Louie Cosper, respectfully shows unto this Honorable Court as follows:

I.

STATEMENT OF MATTERS INVOLVED HEREIN

This is a quasi-criminal action, originally brought after the arrest and detention of your petitioner as the accused subject for an investigation, while the petitioner was within the peace of the people.

The arrest of petitioner by the Police of Chicago on the 10th day of September, A.D. 1948, took place without authority, and without process of a warrant. (Tr. 55, 56).

Following the arrest and after being enlarged on bail, the petitioner on the 13th day of September, A.D. 1948, was charged under several complaints on information filed with the Clerk of the Municipal Court of Chicago, by the mothers of the girls, each aged 10 years. One information charged that the defendant, on the first day (1st) of September, A.D. 1948; the other information, that on the second day (2nd) of September, A.D. 1948, the defendant did unlawfully, knowingly and willfully encourage their daughters, severally, on the days mentioned to become delinquent children by the commission of certain acts as set out in the informations and in violation of Sec. 104, Par. 2, Chap. 38, of the Ill. Rev. Stat. 1947. (R. 3, 10 Pl. Ex. 1 #31350 1949)

Your petitioner waived trial by a jury. On trial by the court, he was found guilty under both informations and was sentenced to the House of Correction of Chicago for a period of one (1) year. The causes, by stipulation, were consolidated, and removed on Writ of Error to the Supreme Court of Illinois, November Term, A.D. 1949. (R. #31350, A.D. 1949).

The cause was there reviewed. The Court held, that the record did not disclose, that a constitutional question was raised, or decided by the trial court. Rehearing denied May 15, 1950. Therefore, it ordered the cause transferred to the Appellate Court, First District Illinois. 405 Ill. 543, 92 NE 2d 173.

The Appellate Court, First District, of Illinois, June 29, 1951, upon a petition for rehearing reversed the cause

on the complaint, Mrs. James Kafesjian, filed in behalf of Yvonne Kafesjian, aged 10 years, and reversed and remanded the complaint of Mrs. Ann Maier, filed in behalf of Joanne Maier, aged 10 years, for a new trial (Abst. opinion) 92 NE 2d 837. The cause on retrial was set for trial by jury. (R. 5-8 #33304, see: Appendix III).

Petitioner before the succeeding trial by jury, again challenged the information of Mrs. Ann Maier on behalf of Joanne Maier, the Prosecutrix, on motion to strike and quash, assigning errors, specifically invoking Federal and State Constitutional questions. (R. 2-5 #33304). On hearing argument of respective counsel, the trial court overruled and denied the motion to strike and quash, the complaint. (R. 9 #33304).

The cause proceeding to a second trial, January 23, 1953 (R. 9 #33304) a jury found the defendant guilty, and directed the defendant be sentenced to the House of Correction in Chicago, for a period of Ninety (90) days. (R. 10 #33304). Defendant then moved for a new trial and arrest of judgment. The respective motions upon hearing, by the court were overruled, denied and preserved of record. (R. 11-13 #33304).

Your petitioner then moved on Writ of Error, to the Appellate Court, First District, of Illinois, December Term, A.D. 1953, assigning as errors, that the petitioner's rights had been denied as guaranteed under Secs. 2-6 and 9, of Article II, and Sec. 13 of Article IV, of the Illinois State Constitution of A.D. 1870, and the trial court having further denied and violated the petitioner's rights, under "due process" of the XIVth Amendment to the Constitution of the United States. (R. 72-74 #33304).

CHILD DELINQUENCY.
MISDEMEANORS.

The statutory crime of contributing to the delinquency of children, Chap. 38, Sec. 100, 103, Ill. Rev. Stat. A.D. 1953, Vol. I, pp. 1315-16 (Bar Edition) is a misdemeanor (See Appendix IV), under judicial decree of Illinois Supreme Court, and under the interpretation of Sec. 199 (Chap. 110, Ill. Rev. Stat. A.D. 1953.) Bar Edition [Civil Practice Act.] (See Appendix VI). Such misdemeanors are directed to be appealed to the Appellate Court of Illinois. See: *People* v. *Rosenthal*, 370 Ill. 244 18 N.E. 2d. 450, [1].

Your petitioner filed the Writ of Error in the Appellate Court First District, as directed to misdemeanors, and timely invoked Rule 47, to transfer the cause under the rules of the Supreme Court and Appellate Court, A.D. 1953. (R. 80-82 #33304) on the grounds, that Federal and State Constitutional questions were presented, pertinent, and directly involved, not waived, or to be waived, or considered to be waived by the Appellate Court, First District, of Illinois. (R. 81-82 #33304), under:

RULE 47

(Chap. 110, Par. 259.47, (Ill. Rev. Stat. 1953). Vol. 2, p. 529.

TRANSFERRED CAUSES

> "If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or vice versa, it may be transferred to the proper court on motion, and upon an order for transference being made all documents already filed in the wrong court shall be transmitted by the clerk to the proper court, and the case shall proceed from that point in all respects as though the appeal had originally been taken to the proper court."

Your petitioner's motion timely and expressly invoked and maintained his rights, under Federal and State Constitutions to transfer under Rule 47, assigned as grounds for tranfer (R. 80-82, #33304):

(a) Right for a determination, Federal and State Constitutional questions raised preliminary to the trial.

(b) Rights, invoking Federal and State Constitutional protection during the trial.

(c) The motion to transfer the cause under Rule 47, specifically urged for determination, defendant's guaranteed rights under our Federal and State Constitutions as preserved of record and violated throughout the trial. The violations were urged for determination on constitutional grounds by timely and proper notice to the Appellate Court, as grounds for transfer under Rule 47. (R. 80-82 #33304).

(d) That on notice to the Appellate Court, the defendant steadfastly maintained that he does not waive, nor should the Appellate Court consider that he has waived any of his constitutional rights to be determined, as guaranteed to him under our Federal and State Constitutions. The motion to transfer under Rule 47, was summarily denied without comment by the Appellate Court, First District. (R. 79-82 #33304).

The Appellate Court, First District, December Term, A.D. 1953, on reviewing the cause solely confined its opinion to the merits, and affirmed the Judgment of the Court below, on basic assumptions, holding that by petitioner's challenging the validity of the judgment on constitutional grounds, in the Appellate Court, petitioner had waived his Constitutional rights, under the ruling opinions of the Supreme Court of Illinois. (Appendix II).

Rehearing denied April 21, A.D. 1955, Ill. App. 2d, 468, 118 NE 2d 639. Abst. Opinion (see Appendix III).

Your petitioner then proceeded to the Supreme Court of Illinois, by a Writ of Error, directed to the opinion of the Appellate Court, First District, Appendix I, chiefly assigning as error a substantial denial of "Due Process of Law" by the Trial and Appellate Courts under the guarantees of our Federal and State Constitutions, and there expressly invoking a substantial denial of his opportunity to be heard on the issues of Constitutional Rights, Federal and State preserved of record, as provided by the statute to transfer, including Rule 47, of the Illinois Supreme and Appellate Courts Rules, A.D. 1953. (R. 80-82).

The Supreme Court of Illinois, reviewed the cause. The opinion filed January 21, 1953, affirmed the Appellate Court, First District, by holding, that while it was asserted, that the Appellate Court wrongfully denied Petitioner's motion to transfer the cause to this Court in accordance with Rule 47, Ill. Rev. Stat. 1953, Chap. 110, Par. 259.47 Vol. 2, p. 504, (Bar Edition), which provides:

TRANSFERRED CAUSES

"If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or vice versa, it may be transferred to the proper court on motion, and upon an order for transference being made all documents already filed in the wrong court shall be transmitted by the clerk to the proper court, and the case shall proceed from that point in all respects as though the appeal had originally been taken to the proper court,"

the Supreme Court's opinion under this provision in the instant case held:

> "When cases are taken to the Appellate Court wherein errors are assigned of which that court has jurisdiction, the party so suing out the Writ of Error is deemed to have waived all Constitutional questions involved." (Appendix I).

Your petitioner filed his petition for a rehearing setting forth his reasons in two sections: Sec. I, The Appellate Court, affirming the judgment of the Trial Court, relate to a violation of your petitioner's Federal and State Constitutional rights and immunities; and Sec. II, the opinion of the Appellate Court, affirming the judgment of the trial Court, are in (a) conflict with the applicable and controlling decisions of the United States Supreme Court; (b) in conflict with this court's own earlier decisions; (c) in conflict with the applicable local law, controlling in cases of child delinquency; (d) and the instant decision of this court, has radically departed from the accepted and usual course of judicial proceedings, and thereby sanctioned such departure by the Trial Court below violative of the XIV amendment. Petition for Rehearing, denied, March 22, A.D. 1955. 5 Ill. 2d 97, 125 NE 2d 66.

Although this case presents no new or undecided questions, it still remains that the state courts and the reviewing courts of Illinois have rejected and refused to grant the petitioner "Due Process of Law", by, the protection of which, he is entitled therefore under the XIVth Amendment to the Constitution of the United States. That it therefore becomes necessary to once again invoke the power and authority of this court under Secs. 2 and 3, of Art. VI, and the XIVth Amendment to the Constitution of the United

States, in order to obtain the privileges, immunities, and rights guaranteed to the petitioner under and by the Constitution of the United States.

THE JUDGMENT TO BE REVIEWED.

The judgment on the verdict of the jury entered January 23, A.D. 1953, (R. 9, #33304 under docket #46274) removed by writ of error to the Appellate Court, First District, Illinois, December Term, A.D. 1953. There the judgment of the Trial Court was affirmed. (Appendix II). The cause then removed to the Supreme Court of Illinois, November Term, A.D. 1954. The Supreme Court under docket #33304 affirmed the Appellate Court, January 21, A.D. 1955. Rehearing denied March 22, A.D. 1955, (Rec. #33304). (Appendix I).

THE QUESTIONS PRESENTED FOR REVIEW.

(a) Where the State Court has decided a Federal question of substance, not heretofore determined by this Honorable Court, or has decided it in a way probably not in accord with the applicable decisions of this Honorable Court.

(b) Where a court of appeals has rendered a decision in conflict with the decisions of another court of appeals on the same matter.

(c) Where the court of appeals has decided an important state question in a way in conflict with the applicable decisions, and the State law.

(d) Where the court of appeals has decided an important question of federal law which has not been, but should be settled by this Honorable Court.

(e) Where the court of appeals has decided a federal question in a way in conflict with applicable decisions of this Honorable Court.

(f) Where the court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Honorable Court's power of supervision.

THE JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to Sub-sec. (2) of Sec. 1257, Title 28, of the U.S.C. Ann. to review by *certiorari*, the final judgments of the highest courts of the States, in causes in which the rights of its citizens have been asserted to have been violated and denied to them under the Constitution of the United States and Constitution of the State.

The petitioner has asserted throughout and maintained a violation and denial of his Federal and State Constitutional rights, by writ of error, filed in the reviewing courts of Illinois, claimed under Sec. 1, of the XIVth Amendment. and Secs. 2-3, of Art. VI, of the Constitution of the United States, upon the grounds that the judgment order was there reviewable. These claimed violations were rejected, excluded and denied to the petitioner in and by the reviewing courts of Illinois, and reviewable in and by this Honorable Court, within the purview of Sub-sec. (2) of Sec. 1257, Title 28, of the U.S.C. Ann.

THE CONSTITUTIONAL PROVISIONS AND THE STATE STATUTES HEREIN INVOLVED.

The constitutional provision, here preserved of record, involve:

(a) Violations and denials of Secs. 2, 6 and 9 of Art. II, Appendix X, and Sec. 13 of Art. IV, Appendix IX, and Sec. 33 of Art. VI, Appendix XII, of the Constitution of the State of Illinois of 1870;

(b) The violation and denial of protection under Sec. 382, Par. 27, Chap. 37, Ill. Rev. Stat. Vol. I, p. 1258 (Bar. Ed.) A.D. 1953, Appendix VI;

(c) The violation and denial of protection under Secs. 100 and 103, of Chap. 38, Ill. Rev. Stat. Vol. I, pp. 1368-1396, Appendix IV;

(d) A violation of Sec. 104, (Penalty Clause), Appendix V;

(e) A violation and denial of protection under Secs. 657, 660, 663 and 664, Division VII, Chap. 38, Ill. Rev. Stat. (Bar. Ed.) 1953, Vol. I, pp. 1450-1451, Appendix VIII;

(f) A judicial fiat, by judicial decrees, violative of Sec. 199, Chap. 110, (Illinois Practice Act) 1953, Ill. Rev. Stats. (Bar. Ed.) 1953, Vol. II, pp. 511-512, Appendix VII;

(g) As being contrary to and violative of Section 2, of Art. II, Illinois State Constitution of 1870, and repugnant to, and violative of both Sections 2 and 3 of Article VI, and of the XIVth Amendment to the Constitution of the United States.

THE REVIEW ON WHICH THE JUDGMENT OF THE STATE COURTS SOUGHT.

The plaintiff's method of raising the state and federal questions in the State Courts of Illinois, sought here to be reviewed as they appear in the record, #31350, November Term, A.D. 1949, and Record #33304, December Term, A.D. 1953, are:

In the trial record #31350:

(a) By a motion to suppress and quash the proceedings; motion denied. (R. pp. 5-6).

(b) Motions for new trial in arrest of the judgment; motions denied. (R. p. 7).

(c) By assignment of errors in the reviewing court; excluded and denied. (R. pp. 48-52).

In trial record #33304:

1. By motion to quash and strike the complaint and information; motion denied. (R. pp. 2-5).

2. By motions for a new trial and in arrest of the judgment; motions denied. (R. pp. 10-12).

3. By given instructions to the jury; offered by the defendant, and refused. (R. p. 65-72).

4. By assignment of errors in the reviewing court; excluded and denied. (R. pp. 72-74).

5. By assignment of errors in the Appellate Court, First District, Illinois; excluded and denied. (R. p. 84).

6. Motion to transfer the cause from the Appellate Court to the Supreme Court, under Rule 47 of the Supreme Court; refused, denied and excluded. (R. pp. 79-82).

The respective records show, that federal and state questions were timely and properly raised and preserved of record at the first step of the proceedings and carried on throughout the proceedings, so as to give jurisdiction to this Honorable Court to review the judgment on writ of certiorari, pursuant to 28 U.S.C. Ann. 1257 (2).

THE QUESTIONS PRESENTED ON THE RECORD.

1. Can the actions of a state trial court and the opinions of the reviewing court of last resort, by custom-made rules, deny to a citizen accused of the commission of a crime, the equal protection of the laws, within the purview of Sec. 1, of the XIVth Amendment to the Constitution of the United States?

2. Can the actions of a reviewing court, by custom-made rule, deny and refuse to determine substantial federal and state constitutional rights properly and timely presented by its citizens in reviewing criminal causes, under Section 1, of the XIVth Amendment to the Constitution of the United States.

3. Can the judges of any reviewing court, in any manner limit or in any way affect the binding force of the plain intendment of Sections 2 and 3 of the Sixth Article of the Constitution of the United States, without violating their own oaths under Sections 2 and 3, of the Sixth Article of the Constitution of the United States?

4. Can a state legislature, under the tripartite division of government, by the enactment of legislation (Chap. 110, Sec. 199, pp. 511-512, Ill. Rev. Stats., A.D. 1953).

(a) Deprive and deny to the judges of an Appellate Court by their own sworn duty under Art. VI to support the constitution to pass upon and determine federal and state constitutional questions?

(b) To confer and confine by limitation that right by legislative enactment upon only judges of the Supreme Court of a State, and all *nisi prius* judges of the State, but restraining Appellate court judges?

(c) Can a State Court of last resort indirectly avoid to determine, federal and state constitutional rights of its citizens, properly and timely presented for review, where the constitutions, federal and state, by mandate commands the reviewing courts to follow and obey that right directly?

5. Can the judges of a state supreme court, by custom-made rule and judicial decree, confer the right on the judges of the appellate courts to waive all appellant's constitutional questions in a criminal cause assigned as error to the court below in the face of the XIV Amendment?

6. By what constitutional authority or interpretation can a state legislature deprive judges of a state appellate court, of the duty and power to implement the individual oaths of judges of the Appellate court, specified in Article VI of the federal constitution, and this practice be sanctioned by custom made rules wrongfully and arbitrarily adopted by the supreme court of a state?

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

LOUIE COSPER,

Appellant,

vs.

STATE OF ILLINOIS,

Appellee.

BRIEF AND ARGUMENT FOR PETITIONER AND REASONS UPON WHICH PETITIONER RELIES REQUESTING THE GRANTING OF A WRIT OF CERTIORARI.

SPECIFICATION OF ERRORS PRESENTED.

That the Supreme Court of Illinois in the November Term of A.D. 1949, first erred, by holding no constitutional questions were presented by the petitioner, and for that cause transferring the case to the Appellate Court. (R. 31350). The Appellate Court in considering the case, rendered its opinion upon the merits and excluded all federal and state constitutional questions presented, as signed as error to the court below. (Appendix II).

The Supreme Court of Illinois, in the November Term, A.D. 1953, for the second time erred, in sustaining the opinion of the Appellate Court, by holding:

> "When cases are taken to the Appellate Court wherein errors are assigned to which that court has jurisdiction, the parties so suing out the writ of error is deemed to have waived all constitutional questions involved." (Appendix I.)

The record properly before the Supreme Court Illinois showed a denial of petitioner's substantial constitutional rights under "Due Process of Law," violative of the XIVth Amendment by sustaining the opinion of the Appellate Court (Appendix II) in rejecting and excluding all constitutional questions presented to the Supreme Court there for review. 5 Ill. 2d 97—125 NE 2d 60. (Appendix I)

WHEREFORE, it is respectfully requested, that this petition for writ of certiorari be allowed, and the writ granted to review the judgment of the Supreme Court of Illinois, including the Appellate Court, First District of Illinois.

Respectfully submitted,

LOUIE COSPER,
Petitioner,

By: HERBERT M. WETZEL,
ARTHUR FRANKEL,
DEMETRI M. SPIRO,
Attorneys for the Petitioner.

POINTS AND AUTHORITIES.

I.

In general as such reasons bearing on Constitutional inhibitions published in the opinion of the Appellate Court, First District of Illinois, affirming the judgment of the court below, relate to a denial of "due process" and a violation of petitioner's civil rights and immunities under the guarantees of Sec. 2, of Article II, Illinois State Constitution, and the XIVth Amendment to the Constitution of the United States.

Thompson v. *People*, 102 N.E. 2d. 315;
Boyd v. *United States*, 116 U.S. 616;
Carter v. *People*, 329 U.S. 173; 67 S. Ct. 216, 218;
Connally v. *General Const. Co.*, 269 U.S. 385; 46 S. Ct. 126, 127.
People v. *Green*, 368 Ill. 242; 13 N.E. 2d 278.

II.

In particular, that such reasons excluding constitutional rights as pronounced in the opinion of the Supreme Court of Illinois, relating to the opinion of the Appellate Court, First District, of Illinois, affirming the judgment of the court below are in conflict and contrary to the applicable and controlling decisions of the United States Supreme Court, and repugnant to both Article VI, Secs. 2 and 3 and the XIVth Amendment of the Constitution of the United States.

Secs. 2 and 3, Art. VI, U. S. Constitution;
Ableman v. *Booth*, 21 How. 524;
Ward v. *Love County*, 253 U.S. 17, 22;

Creswill v. *Grand Lodge Knights of Pythias,* 225 U.S. 24;
Davis v. *Wechsilier,* 263 U.S. 22, 24.

III.

In particular that such reasons rejecting "Due Process of Law" as pronounced in the opinion of the Supreme and Appellate Courts of Illinois, are in conflict with this court's own earlier decisions.

People v. *Day,* 321 Ill. 521; 152 N.E. 495;
People v. *Plocar,* 411 Ill. 141; 103 N.E. 2d 612;
People v. *Cosper,* 405 Ill. 543, 92 N.E. 2d. 173;
People v. *Chiafreddo,* 381 Ill. 214; 44 N.E. 2d. 888;
People v. *Weber,* 355 Ill. App. 250; 81 N.E. 2d 5;
People v. *Rosenthal,* 370 Ill. 244, 18 N.E. 2d. 450;
People v. *Terrill,* 362 Ill. 61, 199 N.E. 97.

IV.

In particular that such reasons in the opinions sustaining the Trial Court relating to delinquent children are in violation of the applicable Statute of Illinois, and controlling decisions of the reviewing courts of Illinois.

Chap. 38, Sec. 100 and 103, Ill. Rev. Stat. (Bar Ed.) A.D. 1953;
People v. *Day,* 321 Ill. 552, 152 N.E. 2d. 495; 369; 93
People v. *Chiafreddo,* 381 Ill. 214; 44 N.E. 2d 888;
People v. *Plocar,* 341 Ill. App. 369; 93 N.E. 2d 434;
People v. *Plocar,* 341 Ill. 141; 103 N.E. 2d 612;
People v. *Weber,* 335 Ill. App. 215; 81 N.E. 2d 5.

V.

In particular, that the instant decision of the Supreme Court of Illinois, sustaining the Trial Court on the opinion rendered by the Appellate Court, has radically departed from the accepted and usual course of judicial proceedings, and thereby sanctioned such departure by the Trial Court below.

Wallham v. *Ingersoll*, 117 Ill. 123, 7 N.E. 519;
People v. *Bruner*, 343 Ill. 146; 175 N.E. 400;
People v. *Russell*, 245 Ill. 268; 91 N.E. 1075;
United States v. *Reese*, 92 U.S. 214;
Malinski v. *New York*, 324 U.S. 401;
Anderson v. *U.S.*, 318 U.S. 350;
McNabb v. *U.S.*, 318 U.S. 332;
DeJonge v. *State of Oregon*, 299 U.S. 353, 362; 57 S. Ct. 255, 259;
Oulvey v. *Converse*, 326 Ill. 226; 157 N.E. 245;
Chicago & Eastern Illinois Railroad Co. v. *Hines*, 132 Ill. 161, 23 N.E. 1021; 22 Am. St. Rep. 515;
Klawanski v. *Peo.* 218 Ill. 481; 75 N.E. 1028;
Nash v. *United States*, 229 U.S. 373; 33 S. Ct. 780, 781; 57 L. Ed. 1232;
People v. *Brown*, 336 Ill. 257; 168 N.E. 289, 290;
United States v. *Carll*, 105 U.S. 611, 612;
United States v. *Cruikshank*, 92 U.S. 542;
Grasse v. *Dealers Transport Co.*, 412 Ill. 179; 106 N.E. 2d 124;
Italia-American Shipping Corporation v. *Nelson*, 323 Ill. 427; 154 N.E. 198;
Sec. 8 of Art. VI of the Illinois State Constitiution and Sec. 13 of Chap. 37 of the Ill. Rev. Stat. 1935; Vol. I, p. 1255.

ARGUMENT.

I.

At the outset, it will be seen that the questions presented on the records, #31350 and #33304, here for review:

(a) Require a specific consideration of the constitutionality of the law under which the informations were originally filed; and carried on a charge not made an offense by the statute.

(b) A consideration of the legal sufficiency of each of the informations themselves. Petitioner's arrest followed by conviction upon a charge not made an offense under a fatal defective information would be sheer denial of "Due Process."

On the first point petitioner presents general language from Secs. 2, 6, 9, Article II of the Constitution of Illinois, A.D. 1870, and many cases stating the well recognized rule under Sec. 2-9 of Art. II, that laws creating crime ought to be so explicit pleaded that all men subject to their penalties may know what acts it is their duty to avoid. That rule is thus stated in *People* v. *Green*, 368 Ill. 242, 13 N.E. 2d 278, 115 A.L.R. 330, holding; "The right to demand its protection is no empty technicality."

Even in cases of misdemeanors the information or the indictment must be free from all ambiguity, and leave no doubts in the mind of the accused and the court of the extact offense intended to be charged, not only that the defendant may know what he is called upon to meet, but that, upon his pleas of former acquittal or conviction, the record may show with accuracy the exact offense to which

the plea relates. This Court so holding in: *United States* v. *Simmons*, 96 U.S. 360, (24 L. Ed. 819), *United States* v. *Hess*, 124 U.S. 843 (31 L. Ed. 516), *Pettibone* v. *United States*, 148 U.S. 197, (37 L. Ed. 419).

II.

An unlawful arrest cannot be given life (*De Jonge* v. *State of Oregon* 249 U.S. 353, 562; 57 S. Ct. 255, 259) in the absence of a proper affidavit made before a Judge of the Municipal Court of Chicago. See, 382, Chap. 37 Ill. Rev. Stat. (Bar Ed.) Vol. I 1953, p. 1238. On this principle of right the petitioner both by the Federal and State Constitution and the law, was entitled to be free from arrest and search for evidence in the absence of a warrant on the information held by the police until proper complaints before a Judge of the Municipal Court under oath or affirmation were ordered drawn, charging the commission of a specific described crime, and the existence of probable cause shown to the court to suspect that the petitioner had committed the same.

Petitioner submits, that probable cause for issuing a warrant is a judicial function to be determined by a judge before whom the complaint is made, as required by Sec. 382, Chap. 37, of the Ill. Rev. Stat. A.D. 1953 (Vol I, p. 1238) providing, that informations and evidence upon which the judge acts must be reduced to writing, incorporated into a formal complaint, and verified by affidavit, and so held in *People* v. *Prall*, 314 Ill. 518, 145 N.E. 610.

A complaint issued upon the mere conclusion of the accuser unsupported by facts, does not show probable cause within the meaning of Sec. 6, of Art. II, of the Constitution of Illinois, A.D. 1870. Thus in *Lippman* v. *People*, 175 Ill. 101, 51 N.E. 872, it was said:

> "It has been uniformly held, whenever the question has arisen under a statute or constitution containing such provision, that the oath or affirmation must show probable cause arising from facts within the knowledge of affiant, and must exhibit the facts upon which the belief is based, and that his mere belief is not sufficient. (*United States* v. *Thuread*, 20 Fed. 621; *Johnson* v. *United States*, 87 Fed. 187)."

The complaint of Mrs. Ann Maier, (Pl. Ex. 1, R. 1, #31350,) discloses, (a) no appearance made before a Judge of the Municipal Court, testifying under oath, and showing probable cause for the issuance of a warrant, (b) or the appearance of Joanne Maier, age 10 years, the prosecutrix before the court, testifying in her own behalf as to probable cause, (c) The complaint as filed with the clerk, shows no verification subscribed and sworn to by her as the affiant (Pl. Ex. 1, R. 1, #33304), and (d) That the only act performed by Mrs. Ann Maier was that she signed the information as filed with the Clerk on the 13th day of September, 1948. (R. 37-39, #31350).

III.

The crime of contributiong to the delinquency of children, constitutes an offense against the People of the State of Illinois. Section 33 of Article VI; (Appendix XII) directs that all process against citizens so charged, must be carried in the name and by the authority of the People of Illinois. (*Wallham* v. *Ingersoll*, 177, Ill. 123; 7 N.E. 519.)

The information filed by Annie Maier (Pl. Ex. 1, R. 1, #33304) runs "in the name of the Municipal Court of Chicago" and comes in her own proper person.

A writ so executed, and omitting the requirement of Sec. 13 of Art. VI is held to be fatally defective. (*Wallham* v. *Ingersoll, supra,* hence petitioner was not only tried upon an unlawful arrest, but upon a void and illegal information as well.

The complaint of Mrs. Ann Maier, based upon hearsay, constituting a bad reputation of the petitioner, and causing his arrest, standing alone does not constitute probable cause. (R. 37, 39, #31350.)

In *People* v. *Ford,* 356 Ill. 572, 191 N.E. 315, it was held:

> "A bad reputation of the defendant, even if known to the police officers, is not a fact which standing alone, and is not sufficient to induce a reasonable belief and authorize an arrest and search without a warrant."

To the same effect, it was held in *People* v. *Martin,* 382 Ill. 192; 46 N.E. 2d. 997.

IV.

The Trial Court gave erroneous instructions; the Trial Court deprived the petitioner of a fair trial and brought about a miscarriage of justice when it erroneously gave instructions contrary to the limitations and prescriptions, setting forth the causes, under Secs. 100 and 103, Chap. 38, Ill. Rev. Stat. 1953, Vol. I, pp. 1368-1369. Appendix IV, V, *People* v. *Plocar,* 411 Ill. 141, 103 N.E. 2d 612; *Terminiello* v. *Chicago,* 337 U.S. 1.

V.

The right of equal protection of the laws of the State within the meaning of Sec. 1 (1) of the XIVth Amend-

ment, is a guarantee that no state whether by judicial, ministerial or executive officer or by its legislature, may deprive any individual or any class, of rights that are accorded to others in a similar situation. Even though the law of a state on its face, is in no way discriminatory, if a police officer of a state enforces it, or a judicial officer of a state applies it in such a manner to any individual or class, or shows that he or his class was singled out for discriminatory, arbitrary and invidious treatment in a substantial way, that is a denial of equal protection of the law. In *Hysler* v. *Florida*, 315 U.S. 411; 86 L. Ed. 932; 62 S. Ct. 688, this court said:

"If Hysler had been singled out for invidious treatment by the Florida Supreme Court, he could properly complain here."

Applying this rule to the instant case, in *People* v. *Cosper*, 405 Ill. 543, 92 N.E. 2d 173; the opinion filed March 22, 1950, and the court there held no constitutional questions were presented for determination and transferred the cause to the Appellate Court, First District. "Petitioner relied upon *People* v. *Weber*, 335 Ill. 215, 81 N.E. 2d. 5, opinion filed June 21, 1948. The Appellate Court, on the strength of the Weber case, *supra*, reversed and remanded, the instant case.

In *People* v. *Plocar*, 411 Ill. 141, 103 N.E. 2d 612, opinion filed January 24, 1952, the court held:

> "The motions in arrest of judgment were improperly overruled. A motion in arrest of judgment will reach defects in an information the same as a motion to quash or as a general demurrer, and in a criminal case, a motion in arrest of judgment opens the entire record for examination and reaches any defect ap-

parent thereon. *People* v. *Goldberg,* 287 Ill. 238, 122 N.E. 530. Here, the information was insufficient to charge a crime. If an information or indictment is void, the question whether the indictment or information is totally defective or insufficient to charge the offense is preserved for review in a motion in arrest of judgment even though there has been no motion to quash or such motion is not made in apt time. If the information is void it is error to overrule a motion in arrest, and on review the proper order is one of reversal without remanding. *People* v. *Green,* 368 Ill. 242, 13 N.E. 2d. 278; 115 A.L.R. 348."

The Plocar case, *supra,* notwithstanding, the Supreme Court, in *People* v. *Cosper,* 5 Ill. 2d 97, 125 N.E. 2d 61; opinion filed January 21, A.D. 1955, and rehearing denied, March 22, A.D. 1955, Appendix I, held:

"Where the defendant had not raised any constitutional questions in motions for a new trial or in arrest of judgment the defendant had waived his right to be heard on them in the Supreme Court of Illinois. S. H. A. Chap. 110, § 259.47."

The petitioner, therefore, respectfully submits that the discriminatory action of the Municipal Court of Chicago, the Appellate Court, First District, and the Supreme Court of Illinois, in denying petitioner rights that had been accorded to others by the Supreme and Appellate Courts of Illinois in reference to child delinquency, that were basic and fundamental, such denial, in substance, is conclusive that petitioner was denied the equal protection of the laws, as cited by the Supreme Court in its last and final opinion and is a sufficient showing of record here that the petitioner's rights under the XIVth Amendment have been denied, rejected and violated.

Petitioner submits, that where a reviewing court acting in its capacity to review, knowingly rejects and refuses to grant protection to its citizens under basic constitutional rights, as guaranteed by the XIVth Amendment to the Constitution of the United States, clearly shown throughout the record in this cause, the reviewing court of a state thereby indicates that:

(1) Its oath of office under Art. VI, Secs. 2 and 3 of the Constitution of the United States was a mere color of compliance with the Statute;

(2) That the reviewing court of last resort is unable to, and incapable of according to every litigant before it the protection that the State and Federal Constitutional have ordained and guaranteed to him;

(3) And that the court of last resort is incapable of correcting its own error, and

(4) That the court arbitrarily singles out an individual or class of individuals, and permits them to be dealt with, respecting their fundamental rights, in a manner arbitrarily and unreasonably different from that in which others similarly situated are dealt with. *United States* v. *Reese,* 92 Ill. U.S. 214.

CONCLUSION

It is most respectfully suggested, that the action of the Appellate Court, First District, and the Supreme Court of Illinois, in their last final opinion, was but an enlargement of the original denial of due process of law by the trial court, and that such action did not cure the denial of due process of law under the XIVth Amendment. Where-

fore, petitioner most respectfully suggests, that the record in this cause is such that it admits of no defense to petitioner's claimed denial of substantial constitutional rights to the petitioner, suffered by him under the laws and constitutions of the State of Illinois. Hence, this case is such that the writ of certiorari should be granted by this Honorable Court and the cause reviewed.

Respectfully submitted,

Louie Cosper,

Petitioner.

Herbert M. Wetzel
Arthur Frankel
Demetri M. Spiro,

Attorneys for Petitioner.

(Appendices Follow)

APPENDIX I.

OPINION

Supreme Court of Illinois

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* tenth *day of* January *in the year of our Lord, one thousand nine hundred and* fifty five *within and for the State of Illinois.*

Present: George W. Bristow, Chief Justice

Justice Walter V. Schaefer
Justice Joseph E. Daily
Justice Ralph L. Maxwell
Justice Harry B. Hershey
Justice Ray I. Klingbiel

Latham Castle, Attorney General
Harry G. Newman, Marshal

Attest: Earle Benjamin Searcy, Clerk

Be It Remembered, *that afterwards, to-wit, on the* 21st *day of* January, 1955 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:*

People State of Illinois,
Defendant in Error,
No. 33304 v.
Louis Cosper,
Plaintiff in Error.

Error to the
Appellate Court
First District.

EARLE BENJAMIN SEARCY

CLERK OF SUPREME COURT
STATE OF ILLINOIS

Docket No. 33304—Agenda 4—November, 1954.

The People of the State of Illinois, Defendant in Error, v. Louie Cosper, Plaintiff in Error.

Mr. Justice Hershey delivered the opinion of the court:

This is a writ of error to review the decision of the Appellate Court, First District, which affirmed the conviction of the defendant, Louie Cosper, in the municipal court of Chicago. (*People* v. *Cosper,* 2 Ill. App. 2d 168.) The defendant was found guilty by a jury of contributing to the delinquency of a minor, and his punishment was fixed at imprisonment in the house of correction for a term of ninety days.

The facts of the case are stated in the Appellate Court opinion, and we adopt that opinion on the questions relating to the validity of the information, the sufficiency of

the evidence and the correctness of the Court's instructions to the jury.

We wish, however, to add an additional comment with regard to other allegations of error urged by the defendant. Among the assignments of error so urged was that the defendant was denied substantial constitutional rights. It is asserted in this connection that the Appellate Court wrongfully denied his motion to transfer the cause to this court in accordance with Rule 47. (Ill. Rev. Stat. 1953, chap. 110, par. 259.47.) When cases are taken to the Appellate Court wherein errors are assigned of which that court has jurisdiction, the party so suing out the writ of error is deemed to have waived all constitutional questions involved. (*People* v. *Richardson,* 397 Ill. 84; *People* v. *Raymond,* 393 Ill. 147; *People* v. *Billow,* 377 Ill. 236; *People* v. *McDonnell,* 377, Ill. 568; *People* v. *Rosenthal,* 370 Ill. 244; *People* v. *Terrill,* 362 Ill. 61.) Moreover, since the defendant did not raise any constitutional questions in his motions for a new trial and in arrest of judgment, he has waived his right to be heard on them in this review. *People* v. *Cosper,* 405 Ill. 543; *People* v. *Reck,* 392 Ill. 311; *People* v. *Jankowski,* 391 Ill. 298.

Finally, the defendant assigns as error the fact that the jury not only determined guilt but also fixed the penalty. This contention is without merit. Section 6a (b), division XIV, of the Criminal Code (Ill. Rev. Stat. 1953, chap. 38, par 754a(b),) provides, *inter alia*: "In all cases where the penalty as prescribed by statute is confinement in the county jail, or fine, or both, if the jury finds the accused guilty, it shall also fix the time of confinement, or fine, or both, as the case in its judgment requires." The defendant was convicted under section 2 of the act to punish contributing to delinquency of children, (Ill. Rev. Stat. 1953, chap. 38,

par. 104,) which provides a penalty of sentence to the county jail, house of correction or workhouse, or fine, or both. Therefore, section 6a(b) quoted above is applicable, and the jury correctly fixed the penalty. See *People* v. *Moore,* 324 Ill. App. 109.

The judgment of the Appellate Court, First District, is therefore affirmed.

Judgment affirmed

Messrs. Herbert M. Wetzel
&
Arthur Frankel,
105 W. Madison St.,
Chicago, Illinois.

Bloomington, Ill., Feb. 5, 1955

I have this day received

NOTICE OF INTENTION TO APPLY FOR REHEARING

in No. 33304 entitled

People,

v.

Cosper.

Edwin H. Cooke,
EDWIN H. COOKE *GEH.*
Reporter of Decisions.

SUPREME COURT
STATE OF ILLINOIS

JUSTICES

William J. Fulton — Joseph E. Daily
Walter V. Schaefer — George W. Bristow
Ralph L. Maxwell — Harry B. Hershey

Ray L. Klingbiel

OFFICE OF
EARLE BENJAMIN SEARCY
CLERK OF THE SUPREME COURT
SPRINGFIELD

February 4, 1955

Mr. Herbert M. Wetzel
Attorney at Law
105 W. Madison Street
Chicago 2, Illinois

Dear Sir:

Your Notice of Filing Petition for Rehearing,

in re: People State of Illinois,
defendant in error,
vs.
Louie Cosper,
plaintiff in error,

received and filed February 4, 1955,
under General Number 33304.

Very truly yours,
Earle Benjamin Searcy
Clerk of the Supreme Court

APPENDIX II.

Appellate Court of Illinois

AT A TERM OF THE APPELLATE COURT, Begun and held at Chicago, on Tuesday, the Fifth day of June in the year of our Lord One Thousand Nine Hundred and Fifty-One within and for the First District of the State of Illinois.

Present, Hon. Joseph Burke, Presiding Justice.
Present, Hon. Roger J. Kiley, Justice.
Present, Hon. John C. Lewe, Justice.
James M. Whalen, Clerk. John E. Babb, Sheriff.

And afterwards on the 29th day of June A.D. 1951, it being one of the days of the said June Term A.D. 1951 of said Court, there were present:

The Honorable Roger J. Kiley, Presiding Justice
The Honorable John C. Lewe, Justice
The Honorable Michael Feinberg, Justice.
James M. Whalen, Clerk. John E. Babb, Sheriff.

Whereupon the following proceedings were had and entered of record in said cause, to-wit:

BE IT REMEMBERED, That on the 29th day of June A.D. 1951, there was filed in the office of the Clerk of said Court, an opinion of said Court, in words and figures following, to wit:

The People of the State of Illinois,
Defendant in Error,
No. 45222 vs.
Louis Cosper,
Plaintiff in Error.
Error to
Municipal Court
of Chicago

ON REHEARING.

MR. JUSTICE LEWE DELIVERED THE OPINION OF THE COURT.

In this case a rehearing was granted on the petition of plaintiff in error.

Plaintiff in error, Louie Cosper, hereinafter called defendant, was charged with contributing to the delinquency of female children in two separate informations. In a trial before the court without a jury he was found guilty in each case and sentenced to serve one year in the House of Correction, with sentences to run concurrently. Defendant appealed to the Supreme Court, where the cause was transferred to this court on the ground that no constitutional question was presented. (*The People* v. *Cosper*, 405 Ill. 543.) An order was entered by agreement consolidating the records in cases numbered 48 MC 72144 and 48 MC 72142.

In the case of Yvonne Kafesjian, aged ten, No. 48 MC 72144, the information alleged that defendant "did feel and put his hands on the body of said Yvonne Kafesjian (10 years)."

In *People* v. *Weber*, 335 Ill. App. 215, where the same charges were made as here and identical allegations appeared in the complaint, we held that the information was fatally defective, for the reason that it did not allege on what part of the body defendant "put his hands," and thus failed to charge defendant with the commission of any act which would directly render the prosecuting witness delinquent. Under the authority of that decision, the judgment of the Municipal Court of Chicago in case numbered 48 MC 72144 is reversed.

In case number 48 MC 72142, Joanne Maier, aged ten, testified in substance that on the morning of September 1, 1948, she went to the home of defendant and found him dressed in shorts and undershirt; that he placed his arm around her and kissed her; that he took her hand and asked, "Do you want to see something?" and that he exposed certain parts of his body.

Raymond Gillette, a police officer, who arrested defendant on September 10, 1948, testified that defendant after being questioned admitted being dressed in his underwear when Joanne appeared at his home on the morning in question, and that he admitted her into his house, but denied the charge in the information. Testifying in his own behalf, defendant denied seeing Joanne on the morning of September 1, and asserted that he left for his place of employment about twenty minutes before the time Joanne testified she had arrived at his home.

The record shows that at the close of the evidence in the first case, involving Yvonne Kafesjian, defendant's counsel contended that the State failed to make out a case, and asked that the defendant be discharged. Thereupon the trial judge announced that "The court will reserve ruling until we hear from the other witinesses, the other complaining witness," and then proceeded to hear the testimony in the case of Joanne Maier.

At the close of the evidence in the case of Joanne Maier defendant's counsel made a motion to discharge the defendant in both cases. So far as the record shows, defendant did not object to proceeding with the hearing in the case involving Joanne Maier until the court announced its decision in both cases. The offenses charged are separate and distinct. The testimony in the Kafesjian case was irrelevant and inadmissible in the Maier case (see *People* v. *Reed*, 287 Ill. 606), and we think its admission irregular and prejudicial to the defendant. Defendant says that the request of the trial judge to hear the witnesses in the Maier case before ruling on the Kafesjian case shows that he entertained a reasonable doubt as to the guilt of the defendant. We are not unmindful of the presumption that the trial judge considered only the competent relevant evidence in each case before making his findings, but it would seem that if the evidence was sufficient to satisfy the trial judge of the defendant's guilt in the first case he would have made a ruling at the close of the proofs in that case.

Under the circumstances, in the interest of justice, we are impelled to reverse the judgment in the case of Joanne Maier, number 48 MC 72142, and remand the case for a new trial.

For the reasons given, the judgment of the Municipal Court of Chicago in case number 48 MC 72144 is reversed, and the judgment in case number 48 MC 72142 is reversed and the cause remanded for a new trial.

ONE CASE REVERSED AND ONE CASE REVERSED AND REMANDED FOR NEW TRIAL.

Kiley, P. J., concurs.
Feinberg, J., took no part.
(Certificate of Clerk).

APPENDIX III.

OPINION

Supreme Court of Illinois

UNITED STATES OF AMERICA

State of Illinois
Supreme Court } ss.

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* 13th *day of* March *in the year of our Lord, one thousand nine hundred and* fifty, *within and for the State of Illinois.*

Present: Charles H. Thompson, Chief Justice
Justice Francis S. Wilson Justice Walter T. Gunn
Justice William J. Fulton Justice Jesse L. Simpson
Justice Joseph E. Daily Justice Albert M. Crampton

Ivan A. Elliott, Attorney General
Harry G. Newman, Marshal
Attest: Earle Benjamin Searcy, Clerk

Be It Remembered, *that afterwards, to-wit, on the* 22nd *day of* March, 1950 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:*

People State of Illinois,
Defendant in Error,
No. 31350 vs.
Louie Cosper,
Plaintiff in Error.

Error to
Municipal Court
City of Chicago

EARLE BENJAMIN SEARCY
CLERK OF SUPREME COURT
STATE OF ILLINOIS

Docket No. 31350—Agenda 6—January, 1950.
The People of the State of Illinois, Defendant in Error, v. Louie Cosper, Plaintiff in Error.

Mr. Justice Gunn delivered the opinion of the court:

Defendant, Louie Cosper, was convicted in the municipal court of Chicago on two separate informations charging him with contributing to the delinquency of female children, and in a trial before the court was found guilty of each charge. In each case he was sentenced to serve one year in the house of correction, the sentences to run concurrently. He prosecutes a writ of error directly to this court.

The offenses for which the defendant was convicted are misdemeanors, and hence no direct review lies in this court, because they are not punishable with imprisonment in the penitentiary. (Ill. Rev. Stat. 1949, chap. 38, pars. 585-586.)

He seeks to invoke the jurisdiction of this court because of constitutional grounds set out in his assignment of errors to this court. The defendant raised no constitutional question in the municipal court.

The errors raised in the trial court, on motion to quash and also by motions in arrest of judgment, involved the validity of the arrest of the defendant, the sufficiency of the information charging the crime, and that the court improperly allowed the People to amend one of the informations. No constitutional question was urged in the trial court. We have held a number of times that in order to raise a constitutional question, authorizing a direct appeal to this court, the question of the violation of the constitution must not only be raised in a proper procedural manner in the trial court, but must be passed upon and decided by that court. *Ryan* v. *City of Chicago,* 363 Ill. 607; *People ex rel. Rago* v. *Lipsky,* 390 Ill. 70; *People ex rel. Templeton* v. *Board of Education,* 399 Ill. 204.

The record in this case does not disclose that a constitutional question was raised or decided, and neither does it disclose any ground which gives us jurisdiction of a writ of error to review a conviction of a misdemeanor by the municipal court of Chicago.

The cause is transferred to the Appellate Court for the First District.

Cause transferred.

APPENDIX IV.

CHAP. 38, CRIMINAL CODE—ILL. Rev. Stat. 1953, Vol. 1, Sec. 100-103-104:

AN ACT to define and punish the crime of contributing to the dependency and neglect of children. (Approved June 23, 1915. L. 1915. p. 368.

100. Dependent or neglected child defined.) § 1.

"Be it enacted by the People of the State of Illinois, represented in the General Assembly: For the purposes of this Act a dependant and neglected child shall mean any male who while under the age of 17 years or any female who while under the age of 18 years, for any reason is destitute, homeless or abandoned; or dependant upon the public for support; or has not proper parental care or guardianship; or habitually begs or receives alms; or is found living in any house of ill fame or with any vicious or disreputable person; or has a home which by reason of neglect, cruelty or deprivaty on the part of its parents, guardian or any other person in whose care it may be is an unfit place for such child; and any child who while under the age of ten years is found begging, peddling or selling any articles or singing or playing any musical instrument for gain upon the street or gving any public entertainment or accompanies or is used in aid of any person so doing".

AN ACT to define and punish the crime of contributing to the delinquency of children. (Approved June 25, 1915. L. 1915, p. 369.)

"103. Delinquent child defined.) § 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That for the purposes of this Act a

delinquent child is any male who while under the age of seventeen (17) years, or any female who while under the age of eighteen (18) years violates any law of this state; or is incorrigible; or knowingly associates with thieves, vicious or immoral persons; or without just cause and without the consent of its parents; guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequents a house of ill repute; or knowingly frequents any policy shop or place where any gambling device is operated; or frequents any saloon or dram-shop where intoxicating liquors are sold; or patronizes or visits any public pool room or bucket shop; or wanders about the streets in the night time without being on any lawful business or lawful occupation; or habitually wanders about any railroad yards or tracks or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful authority; or uses vile, obscene, vulgar, profane or indecent language in any public place or about any school house; or is guilty of indecent or lascivious conduct.:

APPENDIX V.

CHAP. 38, CRIMINAL CODE—ILL. Rev. Stat. 1953, Vol. 1, Sec. 100-103-104:

AN ACT to define and punish the crime of contributing to the dependency and neglect of children. (Approved June 23, 1915. L. 1915. p. 368.

104. Penalty.) § 2. Any person who shall knowingly or willfully cause, aid or encourage any male under the age of seventeen (17) years or any female under the age of eighteen (18) to be or to become a delinquent child as defined in section one (1), or who shall knowingly or willfully do acts which directly tend to render any such child so delinquent and who, when able to do so, shall willfully neglect to do that which directly tend to prevent such state of delinquency shall be deemed guilty of the crime of contributing to the delinquency of children and on conviction thereof shall be punished by a fine of not more than two hundred (200) dollars, or by imprisonment in the county jail, house of correction or workhouse not more than one (1) year, or by both such fine and imprisonment".

APPENDIX VI.

Chap. 37, Sec. 382, Criminal Cases—prosecution, Par. 27, Ill Rev. Stat. 1953, Vol. 1, p. 1288.

"That all criminal cases in the Municipal Court in which the punishment is by fine or imprisonment otherwise than in the penitentiary, may be prosecuted by information of the Attorney General or State's Attorney, or some other person, and when an information is presented by any person other than the Attorney General or the State's Attorney, it shall be verified by affidavit of such person that the same is true, or that the same is true as he is informed and believes. Before an information is filed by any person other than the Attorney, General or State's Attorney one of the judges of the Municipal Court shall examine the information and may examine the person presenting the same and require other evidence and satisfy himself that there is probable cause for filing the same and so endorse the same. Every information shall set forth the offense with reasonable certainty, substantially as required in an indictment, and the proceedings thereon shall be the same, as near as may be, as upon indictment in the Criminal Court of Cook County, excepting as is by this act otherwise provided. But criminal cases in which the punishment is by fine only may, in the discretion of the court, be prosecuted by complainant as is provided by law for the prosecution of criminal cases before justices of the peace. Any person committed for a criminal or supposed criminal offense and not admitted to bail and not tried within four months after the date of arrest, shall be set at liberty by the

court, unless the delay shall happen on the application of the prisoner or unless the court is satisfied that due exertion has been made to procure the evidence on the part of the people and that there is reasonable grounds to believe that such evidence may be procured within the next sixty days, in which case the court may continue the case for such time as the court may deem necessary, not exceeding sixty days: Provided, however, that if said person be not tried within said sixty days no further continuance shall be granted and said person shall be set at liberty by the court. (As amended by Act approved June 3, 1907. L. 1907, p. 225. Adopted at election held September 17, 1907.)

APPENDIX VII.

Ill. Rev. Stat. A.D. 1953, Vol. I, Chap. 110, Sec. 199, Page 504.

"199. § 75. (JURISDICTION OF APPELLATE AND SUPREME COURTS.) (1) Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or the validity of a statute or the validity of a county zoning ordinance or resolution or a construction of the constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in which the State is interested as a party or otherwise.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) In case, a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case (regardless of the amount involved) decided by them involves a question of such importance, either on account of principal or collateral interests, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the said Appellate Courts it shall be competent for the Supreme Court to grant leave to appeal for its review and deter-

mination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the said Supreme Court. (c) In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses said judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered shall present to and file with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts or circumstances than were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by striking out the portion thereof remanding the cause for new trial or hearing. Thereupon it shall be competent for the Supreme Court to grant leave to appeal from said final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from final judgments of the Appellate Courts is authorized in this section.

"Provided, however, that petitions for leave to appeal under subdivisions 2(b) and 2(c) of this section in actions *ex contractu* (exclusive of actions involving a penalty) and in all cases sounding in damages, shall not be entertained unless the judgment, exclusive of costs, shall be for fifteen hundred dollars ($1500.00) or more, or in cases in which the judgment is against the plaintiff and there is

issued by the Appellate Court, or by one of the judges thereof in vacation, a certificate to the effect that there is fairly involved in the claim of the plaintiff fifteen hundred dollars ($1500.00) or more. And provided also, that application under this Act 1 to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within forty days after the judgment of the Appellate Court shall have become final, either through the denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might be filed, or the expiration of the time within which a notice of intention to file a petition for rehearing (when the filing of such notice is required by rule of the Appellate Court) might be filed; otherwise said power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within fifteen (15) days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granted within said fifteen-day period. As amended by act approved July 12, 1949."

APPENDIX VIII.

"Chap. 38, Criminal Code, Ill. Rev. Stat. 1953, (Bar. Ed.) pp. 1450-1451.

657. Arrests without warrant.] § 4. An arrest may be made by an officer or by a private person without warrant, for a criminal offense committed or attempted in his presence, and by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it.

"660. Persons arrested to be taken before a magistrate.] § 7. When an arrest is made without a warrant, either by an officer or a private person, the person arrested shall, without unnecessary delay, be taken before the nearest magistrate in the county, who will hear the case, for examination, and the prisoner shall be examined and dealt with as in cases of arrests upon warrant.

"662. Magistrates who may issue process for arrest, examination, etc.] § 1. For the apprehension of persons charged with offenses, except such as are cognizable exclusively by justices of the peace, any judge of a court of record, or any justice of the peace, is authorized to issue process to carry into effect the following provisions of this act. As amended by act approved June 21, 1933 L. 1933, p. 477. In force Jan. 1, 1934.

663. Complaint.] § 2. Upon complaint made to any such judge or justice of the peace that any such criminal offense has been committed, he shall examine on oath the complainant, and any witnesses produced by him, shall reduce the complaint to writing and cause it to be subscribed and sworn to by the complainant; which complaint shall contain a concise statement of the offense charged to have been committed, and the name of the person accused, and that the complainant has just and reasonable grounds to believe that such person committed the offense."

APPENDIX IX.

CONSTITUTION OF ILLINOIS 1870

BILL OF RIGHTS.

ARTICLE II. § 2. "No person shall be deprived of life, liberty or property, without due process of law."

§ 6. "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

§ 9. "In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed".

APPENDIX X.

ART. 4 — P. 11.

PERTINENT PART.

"§ 13. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

APPENDIX XI.

CONSTITUTION OF THE UNITED STATES ART. VI,—PERTINENT PART—SECS. 2 and 3.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a qualification to any Office or public Trust under the United States."

APPENDIX XII.

CONSTITUTION OF ILLINOIS

1870

ARTICLE VI, SEC. 33 (IN PART)

"All process shall run: *In the name of the People of the State of Illinois;* and all prosecutions shall be carried on: *In the name and by authority of the People of the State of Illinois;* and concludes: *Against the Peace and Dignity of the same.*

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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1955.

No. [redacted] 293

LOUIS COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1955.

No. 273.

LOUIS COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported *sub nomine People* v. *Cosper*, 5 Ill. 2d 97. The opinion of the Appellate Court of Illinois is reported *sub nomine People* v. *Cosper*, 2 Ill. App. 2d 168.

QUESTIONS PRESENTED.

The petition presents for determination by this court the following questions:

1. WHERE PETITIONER, REPRESENTED IN EVERY STAGE OF THE PROCEEDINGS BY COUNSEL, DOES NOT ASSERT IN THE TRIAL COURT DENIAL OF FEDERAL RIGHTS AND FOLLOWS A PRACTICE HELD BY THIS COURT AND BY THE STATE COURT TO WAIVE CONSTITUTIONAL QUESTIONS, MAY THIS COURT REVIEW THE ALLEGED DENIAL OF FEDERAL RIGHTS?

2. DOES A DECISION BY THE HIGHEST COURT OF A STATE ON A QUESTION OF STATE LAW ALLEGEDLY IN CONFLICT WITH OTHER DECISIONS OF THAT COURT CONSTITUTE A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

ARGUMENT.

I.

This Court Is Without Jurisdiction.

Petitioner in the courts below waived his right to have reviewed any alleged violations of Federally guaranteed rights. He was convicted of contributing to the delinquency of a minor in the Municipal Court of Chicago. (Abst. Illinois Supreme Court No. 33304, page 9.) Subsequently, his counsel filed motions for new trial and in arrest of judgment. (*Ibid*, pp. 9-12.) In neither motion did he raise any constitutional question. Thereafter he took an appeal to the Appellate Court of Illinois. (*Ibid*, pp. 75-78.)

This is not a cause wherein a defendant without counsel has been convicted in summary proceedings or sentenced following an unknowing waiver of rights. On the contrary, at all times in the extended proceedings, subsequent to his arrest he was represented by counsel who are not strangers to the bar of this court.

This court has repeatedly held that it is without power to decide whether rights guaranteed under the United States Constitution have been violated when a Federal question is not seasonably raised. (*Edelman* v. *California*, 344 U. S. 357.) Under Illinois practice the failure to raise constitutional questions in a motion for a new trial and in arrest of judgment waives the right to review of constitutional issues. (*People* v. *Cosper*, 405 Ill. 543; *People* v. *Reck*, 392 Ill. 311; *People* v. *Jankowski*, 391 Ill. 298.)

Further, by perfecting an appeal to the Appellate Court of Illinois rather than directly to the Supreme Court of Illinois, counsel waived petitioner's right to a review of constitutional questions. (*Parker* v. *Illinois*, 333 U. S. 571, 574.)

II.

No Constitutional Rights of Petitioner Were Violated.

It is difficult to ascertain the basis upon which petitioner asserts violation of his constitutional rights. A reasonable inference is that he seeks to reverse the conviction on the grounds that the courts of Illinois have not determined the law the way in which his counsel feels it should have been determined.

Assuming counsel are correct, that the Supreme Court of Illinois has erroneously determined the law of Illinois, such fact would not transmute mere error into a matter of substantial constitutional moment. (*In Re Converse*, 137 U. S. 624, 631.) In short, petitioner would have this court decree that a state tribunal is without jurisdiction to err. Even today, a state is free to determine purely local law in its own way, so long as it does not unlawfully discriminate against a class of citizens or a member of a class because he is within that class.

III.

The Decision Below Is Clearly Correct.

The contentions of the petitioner that the decision of the Supreme Court interpreting the law of Illinois was incorrect, are more then adequately met in the opinion of Mr. Justice Hershey which is printed at page 36 of petitioner's brief. (*People* v. *Cosper*, 5 Ill. 2d 97.)

CONCLUSION.

In view of the foregoing, it is submitted that this is not a case in which the court should issue its discretionary writ of certiorari.

Respectfully submitted,

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NOV 3 1955
HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

No. 293

LOUIE COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

Petition for Rehearing

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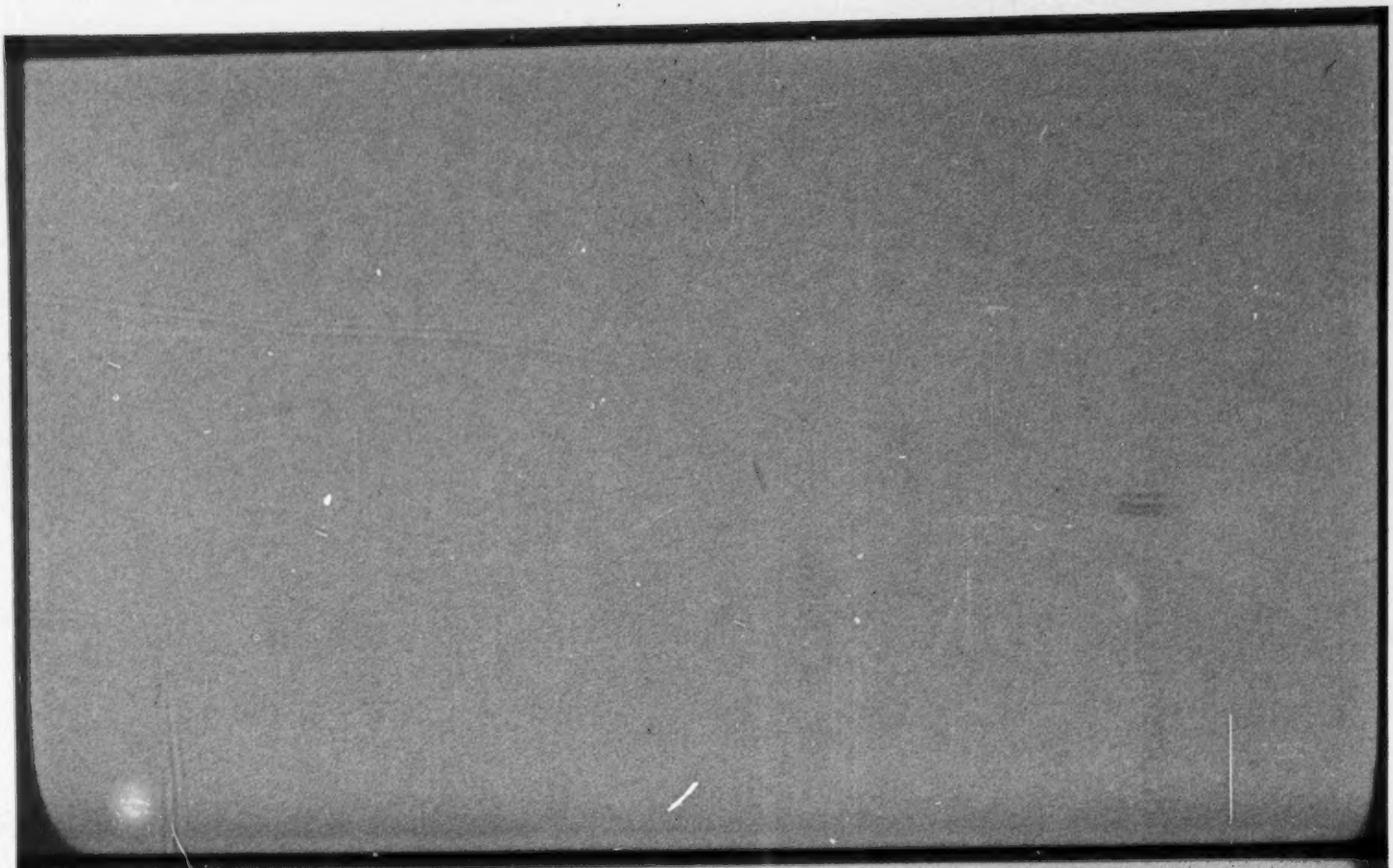

IN THE

Supreme Court of the United States

No. 293

LOUIE COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

Petition for Rehearing

Comes now, Louie Cosper, the petitioner, by his respective counsel having prayed leave to be granted a Certiorari by this Honorable Court. The prayer for a review by certiorari being denied without comment, on the 10th day of October, 1955.

Petitioner now invoking Rule 58, Sec. 2, of the Rules of this Court, to reconsider a petition for rehearing on the points and authorities raised and submitted by your petitioner in his original application for Certiorari. In support of the petition for reconsideration, and a prayer for a rehearing on points and authorities, petitioner submits the following:

POINT I.

That this court in denying the application for certiorari without comment, violated its own rules, and is contrary to a long line of its own decisions, in that:

(a) The trial records Nos. 31350 and 33304, clearly disclosing that Federal Constitutional rights were timely and properly preserved of record, argued by counsel for the petitioner, heard and considered by the trial court, presented, challenged and urged in the reviewing courts of Illinois, and there ignored, overruled and denied, and presented to this court for a review, and being denied.

(b) That constitutional provisions, and vested rights under Illinois State Statutes being timely invoked and presented for a review, were ignored, excluded and denied to the petitioner.

(c) That the application for certiorari, properly, and timely raised jurisdictional questions, invoking Federal Constitutional rights, as ordained by the XIVth Amendment, which the State trial, and the reviewing courts ignored, excluded and disregarded for determination when timely and properly challenged in the Illinois State's reviewing courts.

(d) That the trial and reviewing courts of Illinois, deprived and denied to your petitioner statutory right of equal protection, notwithstanding the State law specifically providing such vested rights of equal protection when timely and properly invoked on "Due Process" grounds, and preserved in the record.

(e) That your petitioner notwithstanding, was actually and improperly obstructed, in all the State Court's proceedings, and now frustrated from making his appeal in a court of last resort upon these questions timely and properly presented to this court for a review, based on

fair play, "Due Process" and plain American justice, ordained under XIV Amendment.

POINT II.

To allow the order dismissing the petition for Rehearing to stand under the circumstances challenged, not only deprives the petitioner in this case of a review under "due process of law", but a denial of a fair day in the court of last resort.

Upon principle, the plainest consideration of justice impels that there be a reconsideration in this case on the order denying to petitioner a review on Certiorari, if for no other reason than that the petitioner in this case was given no opportunity to argue before this court for a judicial determination, the points and authorities on Federal Constitutional rights, and protection, denied to your petitioner under the provision of Illinois Statutes, controlling child delinquency, which denials have been throughout urged, preserved of record and made the sole grounds for the assignment of errors, when removed to this court of last resort by application for a writ for Certiorari, for a determination.

Even assuming that a State Reviewing Court has a right to interpret its own Constitution as it sees fit; but, by the same token, it has no right to disregard and exclude basic federal constitutional right, in a summary way, by *dicta* as appearing of record, when challenged in a reviewing court.

Elementary justice requires that the Reviewing Courts, Federal or State, give all the parties involved in the review, full opportunity to argue and present their views upon the issues assigned as error. Here not only were the errors of the trial court challenged, but timely and properly challenged from inception and throughout the proceedings as a denial of "Due Process of Law" and removed to this court, proclaiming protection under the XIVth Amendment.

POINT III.

The questions presented on the record for reconsideration.

1. Can the actions of a state trial court and the opinions of the reviewing court of last resort, by custom-made rules, deny to a citizen accused of the commission of a crime, the equal protection of the laws, within the purview of Sec. 1, of the XIVth Amendment to the Constitution of the United States?

2. Can the actions of a State reviewing court, by custom-made rule, deny and refuse to determine substantial federal and state constitutional rights properly and timely presented by its citizens in reviewing criminal causes, under Section 1, of the XIVth Amendment to the Constitution of the United States.

3. Can the judges of any State Reviewing Court, in any manner limit or in any way affect the binding force of the plain intendment of Sections 2 and 3 of the Sixth Article of the Constitution of the United States, without violating their own oaths under Sections 2 and 3, of the Sixth Article of the Constitution of the United States?

4. Can a state legislature, under the tripartite division of government, by the enactment of legislation (Chap. 110, Sec. 199, pp. 511-512, Ill. Rev. Stats. A. D. 1953).

(a) Deprive and deny to the judges of an Illinois Appellate Court by their own sworn duty under Art. VI to support the United States Constitution to pass upon and determine federal and state constitutional questions?

(b) Can a State reviewing court confer and confine by limitation that right by legislative enactment upon only judges of the Supreme Court of a State, and all *nisi prius* judges of the State, but restraining Appellate court judges?

(c) Can a State Court of last resort indirectly avoid to determine, federal and state constitutional rights of its citizens, properly and timely presented for review, where the constitutions, federal and state, by mandate commands the reviewing court to follow and obey that right directly?

5. Can the judges of a state supreme court, but custom-made rule and judicial decree, confer the right on the judges of the appellate courts to waive all appellant's constitutional questions in a criminal cause assigned as error to the court below in the face of the XIVth Amendment?

The record is clear that your petitioner's application merits claim in this court under the "Due Process Clause" of the XIVth Amendment upon the basic questions and the errors timely assigned thereon to the trial and reviewing court of Illinois, presented prior to taking of an appeal to this court. The order of this court thereupon denying the Writ of Certiorari seems all the more incomprehensible in view of no showing of Appellee's intention to make a reply to the following questions presented under Points III and IV, which petitioner implores this court to reconsider on the petition here praying for rehearing, and consideration.

6. By what constitutional authority or interpretation can a state legislature deprive judges of a state appellate court, of the duty and power to implement the individual oaths of judges of the Appellate Court, specified in Article VI of the federal constitution, and this practice be sanctioned by custom made rules wrongfully and arbitrarily adopted by the supreme court of a state?

POINT IV.

The questions here presented for review and reconsideration.

(a) Where the State Court has decided a Federal question of substance, not heretofore determined by this Honorable Court, or has decided it in a way probably not in accord with the applicable decisions of this Honorable Court.

(b) Where a state court of appeals has rendered a decision in conflict with the decisions of another state court of appeals on the same subject matter.

(c) Where the state court of appeals has decided an important state question in a way in conflict with the applicable decisions, and the State's law.

(d) Where the state court of appeals has decided an important question of federal constitutional, right under the XIVth Amendment which has not been, but should be settled by this Honorable Court.

(e) Where the state court of appeals has decided a federal question in a way in conflict with applicable decisions of this Honorable Court.

(f) Where the state court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower state court as to call for an exercise of this Honorable Court's power of supervision.

POINT V.

The petitioner respectfully submits, and believing he has reliably complied with the rules of this court by marking and presenting questions to be considered by this court, listing their relative importance to all citizens of Illinois. While these questions indicated a compelling interest in the future to all citizens of Illinois in trial and appellate court

procedure. There is a strong secondary question of equal importance. That the petitioner was singled out, and by discriminatory trial and appellate procedure denied equal protection of the Illinois law governing child delinquency, cited as the controlling decisions by the Illinois Supreme Court.

The plainest consideration of justice implores this court in that case, if for no other reason to grant a review and rehearing on the practice now followed in Illinois Trial and Reviewing Courts. Failure to do so by this court does now sanction all the Illinois Courts a right to continue and ignore Federal Constitutional protection to its citizens. Such impression should be condemned, as violating the XIVth Amendment.

To allow the order denying the Certiorari to stand under these circumstances, not only deprives the petitioner in this case of a fair day in this court but established a precedent, that the state court of Illinois may now have free-wheeling in the light of the present order denying the petition for Certiorari, thereby overthrowing or striking down all claims of federal constitutional right to its citizens under the XIVth Amendment and overthrowing *stare decises* opinions long established by this court.

CONCLUSION

In conclusion it may be stated that the petitioner as appellant, has shown of record that he was convicted as the result of an illegal arrest. That the court was without jurisdiction beginning with the challenge to the arrest, and therefore the judgment of the court as the first step should not be enforced.

That the appellant has shown that he has preserved of record beginning with the first step a violation of a certain definite statute of Illinois governing child delinquency

which the trial and reviewing courts ignored disregarded and excluded from all consideration.

That the appellant has shown in removing his cause to the Appellate Court of Illinois, that he expressly reserved his rights and privileges as guaranteed to him under the XIVth Amendment. That the Appellate Court upon request to remove the cause to the Supreme Court of Illinois on the grounds of Federal constitutional violations refused and ignored the request and in their opinion published, contended that the appellant by appealing to the Appellate Court of Illinois, First Division, waived all his constitutional rights, federal and state.

That the Appellant has shown, that he has been singled out and dealt different with from that class of citizens of Illinois, falling within the prescription of the Statute defining the crime of delinquency to minor children. That he has been singled out and dealt different with the opinions published by the Illinois Supreme Court of Iliinois defining child delinquency.

Under the doctrine long established by this court, that "Due Process" implies that the rights of life, liberty and property of each individual shall be determined by general rules which shall apply to all who have similar rights or are similarly situated with reference thereto. It negatives any form of procedure which arbitrarily singles out an individual or class of individuals and permits them to be dealt with respecting these fundamental rights in a manner arbitrarily and unreasonably different from that in which others similarly situated are dealt with.

In *United States* v. *Reese,* 92 U.S. 214 where the Court in dealing with this question of similar import, gives expression on this point in the following language:

> "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it for the Courts to step inside and

say who would be rightfully detained and who should be set at large.

"This would to some extent substitute the judicial for the legislative department of the government."

Therefore, your petitioner prays, that this court reconsider on this petition for a rehearing on the jurisdictional questions presented to it by the application for a petition for certiorari, with a declaration of the law pertaining thereto.

That your petitioners praying protection from further jeopardy under the present order denying relief, further implores this court for a reconsideration and for a determination as to the legality of the proceeding in the reviewing courts of Illinois, now existant, denying to your petitioners relief under "Due Process" timely and properly invoked. That this court reconsider the points and authorities cited and submitted by the petitioner in his application and petition praying for the issuance of the Writ of Certiorari and in the light of the argument advanced grant to your petitioner the application for a Writ of Certiorari and his day in this court of last resort.

Respectfully submitted,

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ARTHUR FRANKEL
DEMETRI M. SPIRO
Attorneys for the Petitioner.

CERTIFICATE

I do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

HERBERT M. WETZEL